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PLC

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October 5, 2000

Mr. David Waddell  
Executive Secretary  
Tennessee Regulatory Authority  
360 James Robertson Parkway  
Nashville, TN 37201

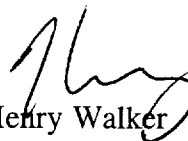
Re: Tariff Filings by all Telephone Companies Regarding Reclassification of  
Pay Telephone Service as Required by FCC Order 96-439  
Docket No. 97-00409

Dear Mr. Waddell:

Please accept for filing the original and thirteen copies of the Motion to Compel  
filed on behalf of the Tennessee Payphone Owners Association in the above-captioned proceeding.  
Copies have been provided to parties of record.

Very truly yours,

BOULT, CUMMINGS, CONNERS & BERRY, PLC

By:   
Henry Walker

HW/nl  
Enclosure

POSTED  
10-9-00

**BEFORE THE TENNESSEE REGULATORY AUTHORITY**  
**NASHVILLE, TENNESSEE**

**IN RE:      TARIFF FILINGS BY LOCAL EXCHANGE COMPANIES TO COMPLY  
              WITH FCC ORDER 96-439 CONCERNING THE RECLASSIFICATION OF  
              PAY TELEPHONES**

**DOCKET NO. 97-00409**

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**MOTION TO COMPEL**

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The Tennessee Payphone Owners Association ("TPOA") requests that the Hearing Officer compel BellSouth Telecommunications, Inc. ("BellSouth") to answer TPOA's Supplemental Discovery Requests. Items 1-10. Copies of TPOA's questions and BellSouth's responses are attached.

On September 22, 2000, TPOA served upon BellSouth eleven Supplemental Discovery Requests. Ten of the eleven questions concerned BellSouth's cost study filed at the direction of the TRA on September 15, 2000. BellSouth's cost study was based on the company's TELRIC Calculator which the TRA has adapted for use in the determination of cost-based UNE rates in docket 97-01262. For purposes of this proceeding, however, BellSouth adjusted the TELRIC Calculator to remove all "shared" and "common" costs. The TPOA's discovery questions asked BellSouth to "restore the portions of the worksheet[s] that calculate 'Shared Cost' and 'Common Cost' to the condition previously approved by the Authority" in the UNE docket.

In a response filed September 29, 2000, BellSouth refused to answer the discovery requests on the grounds that this adjustment would "develop a TELRIC study" and "TELRIC is not the correct methodology for costing payphone rates."

BellSouth's answer is not a legally recognizable excuse for the failure to respond to a relevant, non-burdensome, discovery request. Furthermore, as BellSouth and the TPOA are aware, the FCC's Common Carrier Bureau issued an order on March 2, 2000, (the "Wisconsin Order") specifically holding that rates for payphone lines should not, absent unusual circumstances, include overhead costs (*ie.*, shared and common costs) in excess of the overhead allocations used to set UNE rates. A copy of the Order is attached; see paragraphs 9-11.

BellSouth may disagree with the *Wisconsin Order* but cannot pretend that it does not exist or that it does not purport to set guidelines that states must follow in establishing rates for payphone access lines. In light of that *Order* and the obvious importance of obtaining the requested information on overhead costs, BellSouth's refusal to respond to these discovery requests simply because BellSouth believes "it is not appropriate" suggests a lack of good faith and may be grounds for sanctions.

TPOA asks that the Hearing Officer immediately order BellSouth to make the requested adjustments to the company's cost study and file the study with the agency by Monday, October 10, 2000.

Respectfully submitted,

BOULT, CUMMINGS, CONNERS & BERRY, PLC

By: 

Henry Walker

414 Union Street, Suite 1600

P.O. Box 198062

Nashville, TN 37219

(615) 252-2363

*Attorney for Tennessee Payphone Owners  
Association*

## CERTIFICATE OF SERVICE

I hereby certify that on October 5, 2000, a copy of the foregoing document was served on the parties of record, via U.S. Mail, addressed as follows:

Richard Collier, Esq.  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, Tennessee 37243-0505

T.G. Pappas, Esquire  
Bass, Berry & Sims  
2700 First American Center  
Nashville, Tennessee 37219-8888

James Wright, Esquire  
United Telephone-Southeast  
14111 Capitol Blvd.  
Wake Forest, NC 27587

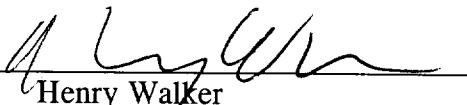
Jon Hastings, Esquire  
Boult, Cummings, Conners & Berry  
414 Union Street, Suite 1600  
Nashville, Tennessee 37219-8062

Richard Tettlebaum, Esq.  
Citizens Telecom  
6905 Rockledge Dr.  
Suite 600  
Bethesda, MD 20817

Guilford F. Thornton, Jr., Esq.  
Stokes Bartholomew Evans & Petree  
Sun Trust Center  
424 Church St., Suite 2800  
Nashville, TN 37219-2386

Guy M. Hicks, Esquire  
BellSouth Telecommunications, Inc.  
Suite 2101  
333 Commerce Street  
Nashville, Tennessee 37201-3300

Tim Phillips, Esq.  
Consumer Advocate Division of the Attorney  
General's Office  
426 5<sup>th</sup> Ave., North, 2<sup>nd</sup> Floor  
Nashville, TN 37243

  
Henry Walker

## **ATTACHMENT 1**

RECEIVED OCT 2 2000



BellSouth Telecommunications, Inc.  
333 Commerce Street  
Suite 2101  
Nashville, TN 37201-3300  
guy.hicks@bellsouth.com

September 29, 2000

Guy M. Hicks  
General Counsel  
615 214-6301  
Fax 615 214-7406

VIA HAND DELIVERY

David Waddell, Executive Secretary  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, TN 37238

RE: *All Telephone Companies Tariff Filings Regarding Reclassification Of  
Pay Telephone Service As Required By Federal Communications  
Commission (FCC) Docket 96-128  
Docket No. 97-00409*

Dear Mr. Waddell:

Enclosed are the original and thirteen copies of BellSouth Telecommunications, Inc.'s Responses to Tennessee Payphone Owners Association Supplemental Data Requests. Copies of the enclosed are being provided to counsel of record for all parties.

Very truly yours,

A handwritten signature in black ink, appearing to read "Guy M. Hicks", with a large, sweeping flourish extending to the left.

Guy M. Hicks

GMH:ch  
Enclosure

BEFORE THE TENNESSEE REGULATORY AUTHORITY  
Nashville, Tennessee

In Re: *Tariff Filings by Local Exchange Companies to Comply with FCC Order 96-439,  
Concerning the Reclassification of Pay Telephones*

Docket No. 97-00409

**BELLSOUTH TELECOMMUNICATIONS, INC.'S**  
**RESPONSES TO TENNESSEE PAYPHONE OWNERS ASSOCIATION**  
**SUPPLEMENTAL DATA REQUESTS**

- REQUEST: Refer to page A.1.10 (bates stamp 000028) of Exhibit DDC-1.
- a. Describe in detail the steps taken by BellSouth to cause the entries in the column entitled "Shared Cost" be \$0.00.
  - b. Describe in detail the steps taken by BellSouth to cause the "Common Cost Factor" to be 1.0000.
  - c. Provide a copy of worksheet A.1.10 as it would have appeared if BellSouth had not undertaken the steps described in parts a. and b. above, but instead had permitted the worksheet to produce and report a "Monthly Economic Cost" that includes the level of shared and common costs that would otherwise have been produced by the model. To be clear, TPTA is asking BellSouth to hold all other worksheet inputs constant as presented in Exhibit DDC-1, and to specifically restore the portions of the worksheet that calculate "Shared Cost" and "Common Cost" to the condition previously approved by the Authority.
- RESPONSE:
- a. See response to part c.
  - b. See response to part c.
  - c. The cost study filed by BellSouth utilizes TSLRIC methodology as specified by FCC Docket No. 96-128. The steps requested by the TPOA would develop a TELRIC study. BellSouth has not performed these steps and it is not appropriate to do so because, as stated in previous responses to the TPOA's data requests (see Item No. 1 dated July 3, 1997 and Item No. 6 dated July 25, 2000), TELRIC is not the correct methodology for costing payphone access services.



REQUEST: Refer to page C.1.1 (bates stamp 000032) of Exhibit DDC-1.

- a. Describe in detail the steps taken by BellSouth to cause the entries in the column entitled "Shared Cost" be \$0.00.
- b. Describe in detail the steps taken by BellSouth to cause the "Common Cost Factor" to be 1.0000.
- c. Provide a copy of worksheet C.1.1 as it would have appeared if BellSouth had not undertaken the steps described in parts a. and b. above, but instead had permitted the worksheet to produce and report a "Monthly Economic Cost" that includes the level of shared and common costs that would otherwise have been produced by the model. To be clear, TPTA is asking BellSouth to hold all other worksheet inputs constant as presented in Exhibit DDC-1, and to specifically restore the portions of the worksheet that calculate "Shared Cost" and "Common Cost" to the condition previously approved by the Authority.

RESPONSE:

- a. See response to part c.
- b. See response to part c.
- c. The cost study filed by BellSouth utilizes TSLRIC methodology as specified by FCC Docket No. 96-128. The steps requested by the TPOA would develop a TELRIC study. BellSouth has not performed these steps and it is not appropriate to do so because, as stated in previous responses to the TPOA's data requests (see Item No. 1 dated July 3, 1997 and Item No. 6 dated July 25, 2000), TELRIC is not the correct methodology for costing payphone access services.

REQUEST: Refer to page C.1.2 (bates stamp 000038) of Exhibit DDC-1.

- a. Describe in detail the steps taken by BellSouth to cause the entries in the column entitled "Shared Cost" be \$0.00.
- b. Describe in detail the steps taken by BellSouth to cause the "Common Cost Factor" to be 1.0000.
- c. Provide a copy of worksheet C.1.2 as it would have appeared if BellSouth had not undertaken the steps described in parts a. and b. above, but instead had permitted the worksheet to produce and report a "Monthly Economic Cost" that includes the level of shared and common costs that would otherwise have been produced by the model. To be clear, TPTA is asking BellSouth to hold all other worksheet inputs constant as presented in Exhibit DDC-1, and to specifically restore the portions of the worksheet that calculate "Shared Cost" and "Common Cost" to the condition previously approved by the Authority.

RESPONSE:

- a. See response to part c.
- b. See response to part c.
- c. The cost study filed by BellSouth utilizes TSLRIC methodology as specified by FCC Docket No. 96-128. The steps requested by the TPOA would develop a TELRIC study. BellSouth has not performed these steps and it is not appropriate to do so because, as stated in previous responses to the TPOA's data requests (see Item No. 1 dated July 3, 1997 and Item No. 6 dated July 25, 2000), TELRIC is not the correct methodology for costing payphone access services.

REQUEST: Refer to page C.2.1 (bates stamp 000044) of Exhibit DDC-1.

- a. Describe in detail the steps taken by BellSouth to cause the entries in the column entitled "Shared Cost" be \$0.00.
- b. Describe in detail the steps taken by BellSouth to cause the "Common Cost Factor" to be 1.0000.
- c. Provide a copy of worksheet C.2.1 as it would have appeared if BellSouth had not undertaken the steps described in parts a. and b. above, but instead had permitted the worksheet to produce and report a "Monthly Economic Cost" that includes the level of shared and common costs that would otherwise have been produced by the model. To be clear, TPTA is asking BellSouth to hold all other worksheet inputs constant as presented in Exhibit DDC-1, and to specifically restore the portions of the worksheet that calculate "Shared Cost" and "Common Cost" to the condition previously approved by the Authority.

RESPONSE:

- a. See response to part c.
- b. See response to part c.
- c. The cost study filed by BellSouth utilizes TSLRIC methodology as specified by FCC Docket No. 96-128. The steps requested by the TPOA would develop a TELRIC study. BellSouth has not performed these steps and it is not appropriate to do so because, as stated in previous responses to the TPOA's data requests (see Item No. 1 dated July 3, 1997 and Item No. 6 dated July 25, 2000), TELRIC is not the correct methodology for costing payphone access services.

REQUEST: Refer to page C.2.2 (bates stamp 000050) of Exhibit DDC-1.

- a. Describe in detail the steps taken by BellSouth to cause the entries in the column entitled "Shared Cost" be \$0.00.
- b. Describe in detail the steps taken by BellSouth to cause the "Common Cost Factor" to be 1.0000.
- c. Provide a copy of worksheet C.2.2 as it would have appeared if BellSouth had not undertaken the steps described in parts a. and b. above, but instead had permitted the worksheet to produce and report a "Monthly Economic Cost" that includes the level of shared and common costs that would otherwise have been produced by the model. To be clear, TPTA is asking BellSouth to hold all other worksheet inputs constant as presented in Exhibit DDC-1, and to specifically restore the portions of the worksheet that calculate "Shared Cost" and "Common Cost" to the condition previously approved by the Authority.

RESPONSE:

- a. See response to part c.
- b. See response to part c.
- c. The cost study filed by BellSouth utilizes TSLRIC methodology as specified by FCC Docket No. 96-128. The steps requested by the TPOA would develop a TELRIC study. BellSouth has not performed these steps and it is not appropriate to do so because, as stated in previous responses to the TPOA's data requests (see Item No. 1 dated July 3, 1997 and Item No. 6 dated July 25, 2000), TELRIC is not the correct methodology for costing payphone access services.

- REQUEST: Refer to page D.1.1 (bates stamp 000056) of Exhibit DDC-1.
- a. Describe in detail the steps taken by BellSouth to cause the entries in the column entitled "Shared Cost" be \$0.00.
  - b. Describe in detail the steps taken by BellSouth to cause the "Common Cost Factor" to be 1.0000.
  - c. Provide a copy of worksheet D.1.1 as it would have appeared if BellSouth had not undertaken the steps described in parts a. and b. above, but instead had permitted the worksheet to produce and report a "Monthly Economic Cost" that includes the level of shared and common costs that would otherwise have been produced by the model. To be clear, TPTA is asking BellSouth to hold all other worksheet inputs constant as presented in Exhibit DDC-1, and to specifically restore the portions of the worksheet that calculate "Shared Cost" and "Common Cost" to the condition previously approved by the Authority.
- RESPONSE:
- a. See response to part c.
  - b. See response to part c.
  - c. The cost study filed by BellSouth utilizes TSLRIC methodology as specified by FCC Docket No. 96-128. The steps requested by the TPOA would develop a TELRIC study. BellSouth has not performed these steps and it is not appropriate to do so because, as stated in previous responses to the TPOA's data requests (see Item No. 1 dated July 3, 1997 and Item No. 6 dated July 25, 2000), TELRIC is not the correct methodology for costing payphone access services.

REQUEST: Refer to page D.1.2 (bates stamp 000063) of Exhibit DDC-1.

- a. Describe in detail the steps taken by BellSouth to cause the entries in the column entitled "Shared Cost" be \$0.00.
- b. Describe in detail the steps taken by BellSouth to cause the "Common Cost Factor" to be 1.0000.
- c. Provide a copy of worksheet D.1.2 as it would have appeared if BellSouth had not undertaken the steps described in parts a. and b. above, but instead had permitted the worksheet to produce and report a "Monthly Economic Cost" that includes the level of shared and common costs that would otherwise have been produced by the model. To be clear, TPTA is asking BellSouth to hold all other worksheet inputs constant as presented in Exhibit DDC-1, and to specifically restore the portions of the worksheet that calculate "Shared Cost" and "Common Cost" to the condition previously approved by the Authority.

RESPONSE:

- a. See response to part c.
- b. See response to part c.
- c. The cost study filed by BellSouth utilizes TSLRIC methodology as specified by FCC Docket No. 96-128. The steps requested by the TPOA would develop a TELRIC study. BellSouth has not performed these steps and it is not appropriate to do so because, as stated in previous responses to the TPOA's data requests (see Item No. 1 dated July 3, 1997 and Item No. 6 dated July 25, 2000), TELRIC is not the correct methodology for costing payphone access services.

REQUEST: Refer to page S.1.1 (bates stamp 000067) of Exhibit DDC-1.

- a. Describe in detail the steps taken by BellSouth to cause the entries in the column entitled "Shared Cost" be \$0.00.
- b. Describe in detail the steps taken by BellSouth to cause the "Common Cost Factor" to be 1.0000.
- c. Provide a copy of worksheet S.1.1 as it would have appeared if BellSouth had not undertaken the steps described in parts a. and b. above, but instead had permitted the worksheet to produce and report a "Monthly Economic Cost" that includes the level of shared and common costs that would otherwise have been produced by the model. To be clear, TPTA is asking BellSouth to hold all other worksheet inputs constant as presented in Exhibit DDC-1, and to specifically restore the portions of the worksheet that calculate "Shared Cost" and "Common Cost" to the condition previously approved by the Authority.

RESPONSE:

- a. See response to part c.
- b. See response to part c.
- c. The cost study filed by BellSouth utilizes TSLRIC methodology as specified by FCC Docket No. 96-128. The steps requested by the TPOA would develop a TELRIC study. BellSouth has not performed these steps and it is not appropriate to do so because, as stated in previous responses to the TPOA's data requests (see Item No. 1 dated July 3, 1997 and Item No. 6 dated July 25, 2000), TELRIC is not the correct methodology for costing payphone access services.

- REQUEST: Refer to page S.1.2 (bates stamp 000071) of Exhibit DDC-1.
- a. Describe in detail the steps taken by BellSouth to cause the entries in the column entitled "Shared Cost" be \$0.00.
  - b. Describe in detail the steps taken by BellSouth to cause the "Common Cost Factor" to be 1.0000.
  - c. Provide a copy of worksheet S.1.2 as it would have appeared if BellSouth had not undertaken the steps described in parts a. and b. above, but instead had permitted the worksheet to produce and report a "Monthly Economic Cost" that includes the level of shared and common costs that would otherwise have been produced by the model. To be clear, TPTA is asking BellSouth to hold all other worksheet inputs constant as presented in Exhibit DDC-1, and to specifically restore the portions of the worksheet that calculate "Shared Cost" and "Common Cost" to the condition previously approved by the Authority.
- RESPONSE:
- a. See response to part c.
  - b. See response to part c.
  - c. The cost study filed by BellSouth utilizes TSLRIC methodology as specified by FCC Docket No. 96-128. The steps requested by the TPOA would develop a TELRIC study. BellSouth has not performed these steps and it is not appropriate to do so because, as stated in previous responses to the TPOA's data requests (see Item No. 1 dated July 3, 1997 and Item No. 6 dated July 25, 2000), TELRIC is not the correct methodology for costing payphone access services.



- REQUEST: Refer to page S.1.3 (bates stamp 000076) of Exhibit DDC-1.
- a. Describe in detail the steps taken by BellSouth to cause the entries in the column entitled "Shared Cost" be \$0.00.
  - b. Describe in detail the steps taken by BellSouth to cause the "Common Cost Factor" to be 1.0000.
  - c. Provide a copy of worksheet S.1.3 as it would have appeared if BellSouth had not undertaken the steps described in parts a. and b. above, but instead had permitted the worksheet to produce and report a "Monthly Economic Cost" that includes the level of shared and common costs that would otherwise have been produced by the model. To be clear, TPTA is asking BellSouth to hold all other worksheet inputs constant as presented in Exhibit DDC-1, and to specifically restore the portions of the worksheet that calculate "Shared Cost" and "Common Cost" to the condition previously approved by the Authority.
- RESPONSE:
- a. See response to part c.
  - b. See response to part c.
  - c. The cost study filed by BellSouth utilizes TSLRIC methodology as specified by FCC Docket No. 96-128. The steps requested by the TPOA would develop a TELRIC study. BellSouth has not performed these steps and it is not appropriate to do so because, as stated in previous responses to the TPOA's data requests (see Item No. 1 dated July 3, 1997 and Item No. 6 dated July 25, 2000), TELRIC is not the correct methodology for costing payphone access services.

BellSouth Telecommunications, Inc.  
Tennessee Regulatory Authority  
Docket No. 97-00409  
TPOA's Supplemental Discovery Requests  
September 22, 2000  
Item No. 11  
Page 1 of 1

REQUEST: Define "reasonable overhead."

RESPONSE: In the context of a "new services" test analysis, a reasonable level of overhead means that BellSouth's service rate levels must fall within a range of cost/price ratios that have previously been accepted by the FCC for interstate filings.

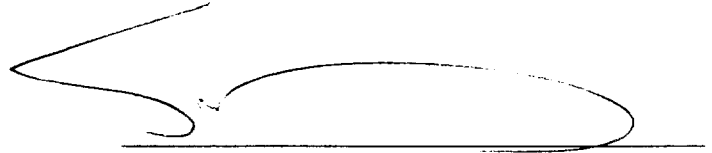
## CERTIFICATE OF SERVICE

I hereby certify that on September 29, 2000, a copy of the foregoing document was served on the parties of record, as follows:

<input type="checkbox"/> Hand	Vincent Williams, Esquire
<input checked="" type="checkbox"/> Mail	Consumer Advocate Division
<input type="checkbox"/> Facsimile	426 5th Avenue, N., 2nd Floor
<input type="checkbox"/> Overnight	Nashville, TN 37243
<input type="checkbox"/> Hand	T. G. Pappas, Esquire
<input checked="" type="checkbox"/> Mail	Bass, Berry & Sims
<input type="checkbox"/> Facsimile	315 Deaderick Street, Suite 2700
<input type="checkbox"/> Overnight	Nashville, TN 37238-0002
<input type="checkbox"/> Hand	James Wright, Esquire
<input checked="" type="checkbox"/> Mail	United Telephone - Southeast
<input type="checkbox"/> Facsimile	14111 Capitol Blvd.
<input type="checkbox"/> Overnight	Wake Forest, NC 27587
<input type="checkbox"/> Hand	Richard Tettlebaum, Esquire
<input checked="" type="checkbox"/> Mail	Citizens Telecommunications
<input type="checkbox"/> Facsimile	1400 16th St., NW, #500
<input type="checkbox"/> Overnight	Washington, DC 20036
<input type="checkbox"/> Hand	Jon Hastings, Esquire
<input checked="" type="checkbox"/> Mail	Boult, Cummings, et al.
<input type="checkbox"/> Facsimile	P. O. Box 198062
<input type="checkbox"/> Overnight	Nashville, TN 37219-8062
<input type="checkbox"/> Hand	Val Sanford, Esquire
<input checked="" type="checkbox"/> Mail	Gullett, Sanford, Robinson & Martin
<input type="checkbox"/> Facsimile	230 Fourth Ave., N., 3d Fl.
<input type="checkbox"/> Overnight	Nashville, TN 37219-8888
<input type="checkbox"/> Hand	Henry Walker, Esquire
<input checked="" type="checkbox"/> Mail	Boult, Cummings, et al.
<input type="checkbox"/> Facsimile	P. O. Box 198062
<input type="checkbox"/> Overnight	Nashville, TN 37219-8062

- ☐ Hand
- ☒ Mail
- ☐ Facsimile
- ☐ Overnight

Guilford Thornton, Esquire  
Stokes, Bartholomew, et al.  
424 Church St., #2800  
Nashville, TN 37219-2323

A handwritten signature in black ink, appearing to read "Guilford Thornton", is written over a horizontal line. The signature is stylized with a large, sweeping loop.

## **ATTACHMENT 2**

Found Document

Rank(R) 1 of 1

Database  
FCOM-FCC

2000 WL 232182 (F.C.C.), 15 F.C.C.R. 9978, 15 FCC Rcd. 9978

Federal Communications Commission (F.C.C.)

Order

IN THE MATTER OF WISCONSIN PUBLIC SERVICE COMMISSION

Order Directing Filings  
CCB/CPD No. 00-1

DA 00-347

Adopted: March 1, 2000

Released: March 2, 2000

By the Deputy Chief, Common Carrier Bureau:

## I. INTRODUCTION

1. In this Order, we direct the four largest incumbent local exchange carriers (LECs) in Wisconsin [FN1] to submit to the Federal Communications Commission (Commission) copies of the currently effective tariffs for intrastate payphone service offerings that have not been determined by the Wisconsin Public Service Commission (Wisconsin Commission) to comply with section 276 of the Communications Act of 1934, as amended (Act) and the Commission's rules.

## II. BACKGROUND

2. Section 276 of the Act establishes requirements designed to promote competition among payphone service providers and promote the widespread deployment of payphone services to the benefit of the general public. [FN2] In its Payphone Reclassification Proceeding, [FN3] the Commission adopted regulatory requirements implementing section 276. The Commission required, inter alia, that incumbent LECs file tariffs for basic payphone lines at the state level only, and that unbundled features and functions provided by incumbent LECs to their own payphone operations or to others be tariffed at both the state and federal levels. [FN4] The Commission required that all incumbent LEC payphone tariffs filed at the state level be cost-based, nondiscriminatory, and consistent with both section 276 and the Commission's Computer III tariffing guidelines. [FN5] The Commission determined that the rates assessed by LECs for payphone services tariffed at the state level must satisfy the requirements that the Commission applies to new interstate access service proposed by incumbent LECs subject to price cap regulation (the "new services test"). [FN6] The Commission stated that it would rely initially on state commissions to ensure that the rates, terms, and conditions applicable to the provision of basic payphone lines comply with the requirements of section 276. [FN7] The Commission also determined that state commissions that are unable to review these tariffs may require incumbent LECs operating in their states to file these tariffs with the Commission. The Common Carrier Bureau (Bureau) has emphasized that the Commission retains jurisdiction under section 276 to ensure that all requirements of section 276 and the Payphone Reclassification Proceeding are

Copr. (C) West 2000 No Claim to Orig. U.S. Govt. Works

Westlaw

met. [FN8]

3. On November 6, 1997, the Wisconsin Commission issued a letter order in its Docket 05-TI-156. In the letter order, the Wisconsin Commission held that its own jurisdiction to investigate the rates charged by LECs to payphone service providers "is very narrowly circumscribed to enforcing a prohibition on cross subsidy...and discriminatory practices." [FN9] The Wisconsin Commission also stated that the statutory remedies available under Wisconsin law "only address whether the retail rates charged by telecommunications utilities for competitive telecommunications service recover the underlying cost for that service." Accordingly, the Wisconsin Commission found that it lacks jurisdiction under state law to ensure that the rates, terms, and conditions applicable to providing basic payphone services comply with the requirements of section 276 of the Act and the Commission's implementing rules. [FN10]

4. On October 28, 1998, the Bureau sent a letter to the Wisconsin Commission stating that, after a review and consideration of the Wisconsin Commission's November 6, 1997 letter order, it was our intention to require the four largest LECs in Wisconsin to file with the "FCC tariffs that set forth the rates, terms, and conditions associated with pay phone services, along with the required supporting documentation." [FN11]

### III. DISCUSSION

5. The Wisconsin Commission's stated lack of authority to review these payphone service offerings invokes this Commission's obligations under section 276 [FN12] and the Commission's Payphone Orders [FN13] to promote competition among payphone service providers and ensure the widespread deployment of public payphone service, among other things. We therefore direct the four largest LECs in Wisconsin to submit currently effective intrastate tariffs that set forth the rates, terms, and conditions associated with payphone services to the Commission, along with the supporting documentation in compliance with the requirements of section 276 and the Commission's implementing rules, including the new services test. More specifically, in order to ensure that the tariffs for the four largest LECs in Wisconsin comply with section 276 of the Act, and pursuant to the Commission's Payphone Orders, we direct Wisconsin Bell, Inc. (d/b/a Ameritech Wisconsin), GTE North Incorporated, subsidiaries of Century Telephone Enterprises Inc., and the Telephone Data Systems, Inc. to submit tariffs for intrastate payphone service offerings to this Commission, together with the supporting documentation, as detailed below, necessary to demonstrate compliance with the requirements of section 276 and the Commission's implementing rules.

6. The submissions we require these incumbent LECs to make are not official tariff filings subject to or required by section 203 of the Act. Rather, the information submitted is necessary to permit us to review the incumbent LECs' rates, terms and conditions for a local service, payphone line service, that is normally tariffed in the intrastate jurisdiction. We require these submissions under authority of section 276 of the Act, in order to ensure that the incumbent LECs fully comply with our Payphone Orders. If we find an incumbent LEC's payphone line rate is not in compliance with the new services test or other section 276 requirements, we have authority, pursuant to section 205, 47 U.S.C. s 205, [FN14] and our general authority under section 4(i) of the Act, 47 U.S.C. s 154(i), to make a determination as to the maximum permissible rate and to require the incumbent LEC to charge no more than that rate, as a measure

necessary to the execution of the Commission's section 276 functions. 47 U.S.C. s 205(a); see also 47 U.S.C. ss 154(i) and 276(b), (c).

7. We intend to review these submissions in a procedural manner similar to tariff review proceedings such as those conducted for "open network architecture" (ONA) tariffs under Computer III tariffing guidelines. Except as otherwise directed, the incumbent LECs should file a copy of a tariff and supporting information, in accordance with the ordinarily applicable Commission rules (e.g., usage-sensitive elements whether specified in the payphone line tariff or cross-referenced to another tariff as well as flat rate elements) and should provide cost support for each rate element in accordance with the cost support requirements described below. Rates, terms and conditions for other services commonly used by payphone service providers ("PSPs") (e.g., call screening services) should also be included. [FN15] For each rate element, the incumbent LEC must submit complete cost studies with full documentation. Summaries of cost study results are not acceptable. [FN16] The initial submissions will be subject to public comment, and LECs will have the opportunity to respond to the comments that are filed. [FN17]

8. In order to avoid unnecessary confusion and delay in the implementation of Payphone Order-compliant tariff filings, we set forth briefly below some of the methodological principles applied under Computer III and other relevant FCC proceedings addressing the application of the new services test and cost-based ratemaking principles to services and facilities offered by incumbent LECs to providers of services that compete with incumbent LEC services. While we have allowed some flexibility in the application of these principles in particular contexts, absent a persuasive justification, we expect the incumbent LECs to apply these principles consistently and rigorously to the cost justification of rates for services needed by incumbent LECs' payphone service competitors.

9. To satisfy the new services test, an incumbent LEC filing payphone line rates must demonstrate that the proposed rates do not recover more than the direct costs of the service plus "a just and reasonable portion of the carrier's overhead costs." [FN18] Costs must be determined by the use of an appropriate forward-looking, economic cost methodology that is consistent with the principles the Commission set forth in the Local Competition First Report and Order. [FN19]

10. With respect to the calculation of direct costs, our longstanding new services test policy is to require the use of consistent methodologies in computing direct costs for related services. [FN20] Cost study inputs and assumptions used to justify payphone line rates should, therefore, be consistent with the cost inputs used in computing rates for other services offered to competitors.

11. In determining a just and reasonable portion of overhead costs to be attributed to services offered to competitors, the LECs must justify the methodology used to determine such overhead costs. [FN21] Absent justification, LECs may not recover a greater share of overheads in rates for the service under review than they recover in rates for comparable services. [FN22] Given that the new services test is a cost-based test, overhead allocations must be based on cost, and therefore may not be set artificially high in order to subsidize or contribute to other LEC services. [FN23] For purposes of justifying overhead allocations, UNEs appear to be "comparable services" to payphone line services, because both provide critical network functions to an incumbent LEC's competitors and both are subject to a "cost-based" pricing requirement. Thus, we expect incumbent LECs to explain any overhead allocations for their payphone



line services that represent a significant departure from overhead allocations approved for UNE services.

12. We also note that the forward-looking cost studies we have required in the contexts described above produce cost estimates on an "unseparated" basis. In order to avoid double recovery of costs, therefore, the LEC must demonstrate that in setting its payphone line rates it has taken into account other sources of revenue (e.g., SLC/EUCL, PICC, and CCL access charges) that are used to recover the costs of the facilities involved.

13. At this time, this Order only applies to the LECs in Wisconsin specifically identified herein. No other Wisconsin LECs are being required at this time to submit data to the Commission. As stated above, all copies of tariffs, including supporting information, must comply with Part 61 of our Rules, 47 C.F.R. ss 61.1 et seq. We require that these copies of tariffs and supporting documentation be filed by May 12, 2000.

#### IV. PROCEDURAL MATTERS

14. An original and six copies of all documents must be filed with the Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Room TW-A325, Washington, D.C. 20554. In addition, parties must file two copies of any such documents with the Competitive Pricing Division, Common Carrier Bureau, 445 12th Street, S.W., Room 5-A207, Washington, DC 20554. Parties must also deliver one copy of such documents to ITS, Inc., the Commission's duplicating contractor, at its office at 1231 20th Street, N.W., Washington, DC 20036. The documents should reference CCB/CPD No. 00-1.

15. This matter shall be treated as a "permit but disclose" proceeding and subject to the "permit but disclose" requirements under 47 C.F.R. s 1.1206(b), as revised. Persons making oral ex parte presentations are reminded that memoranda summarizing the presentation must contain a summary of the substance of the presentation and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. See 47 C.F.R. s 1.1206(b). Other rules pertaining to oral and written ex parte presentations in "permit but disclose" proceedings are set forth in Section 1.1206(b) as well.

#### V. ORDERING CLAUSES

16. Accordingly, IT IS ORDERED that, pursuant to sections 205, 276 and 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. s 276, and through authority delegated pursuant to sections 0.91 and 0.291 of the Commission's rules, 47 C.F.R. ss 0.91 and 0.291, Ameritech, GTE, Century and TDS shall file by May 12, 2000, tariffs as described above for intrastate payphone service offerings in Wisconsin with the Commission, together with all supporting documentation described above necessary to demonstrate compliance with the requirements of section 276 and the Commission's implementing rules.

FEDERAL COMMUNICATIONS COMMISSION

Yog R. Varma  
Deputy Chief  
Common Carrier Bureau

FN1. The four largest incumbent LECs are Wisconsin Bell, Inc. (d/b/a Ameritech Wisconsin), GTE North Incorporated (GTE), the subsidiaries of Century Telephone Enterprises, Inc. (Century), and the Telephone Data Systems, Inc. (TDS).

FN2. 47 U.S.C. s 276(b)(1).

FN3. Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecomm. Act of 1996, CC Docket No. 96-128, First Report and Order, 11 FCC Rcd 20541 (1996); Order on Reconsideration, 11 FCC Rcd 21233 (1996) (Payphone Reconsideration Order), aff'd in part and remanded in part sub nom. Ill. Public Telecomm. Ass'n v. FCC, 117 F.3d 555 (D.C. Cir. 1997); Second Report and Order, 13 FCC Rcd 1778 (1997) (Payphone Clarification Order), aff'd in part and remanded in part sub nom. MCI v. FCC, 143 F.3d 606 (D. C. Cir. 1998); Third Report and Order and Order on Reconsideration of the Second Report and Order, 14 FCC Rcd 2545 (1999), appeal pending sub nom. American Public Communications Council v. FCC, Case No. 99-1114 (D. C. Cir. filed Mar. 22, 1999).

FN4. Payphone Reconsideration Order, 11 FCC Rcd at 21307-09.

FN5. Payphone Clarification Order, 13 FCC Rcd at 1780 P 2, citing Payphone Reconsideration Order, 11 FCC Rcd at 21308.

FN6. See Amendment of Sections 64.702 of the Commission's Rules and Regulations (Third Computer Inquiry), CC Docket No. 85-229, Report and Order, 104 FCC 2d 958 (1986). The new services test is a cost-based test that establishes the direct cost of providing the new service as a price floor. LECs then add a reasonable amount of overhead to derive the overall price of the new service. See Amendment of Part 69 of the Commission's Rules Relating to the Creation of Access Charge Subelements for Open Network Architecture, CC Docket No. 89-79, Report and Order & Order on Further Reconsideration & Supplemental Notice of Proposed Rulemaking, 6 FCC Rcd 4524 (1991).

FN7. See Letter to Joseph P. Mettner, Chairman, Public Service Commission of Wisconsin, from Kathryn C. Brown, Chief, Common Carrier Bureau, 13 FCC Rcd 20865 (Com. Car. Bur. 1998).

FN8. Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecomm. Act of 1996, CC Docket No. 96-128, Order, 12 FCC Rcd 20997 (Com. Car. Bur. 1997); see also North Carolina Utilities Commission Order Dismissing and Directing Filings, 13 FCC Rcd 5313 (Com. Car. Bur. 1998).

FN9. Wisconsin Public Service Commission Letter Order, Docket No. 05-TI-156, November 6, 1997 (unpublished).

FN10. Id.

FN11. See Letter to Joseph P. Mettner, Chairman, Public Service Commission of Wisconsin, from Kathryn C. Brown, Chief, Common Carrier Bureau, 13 FCC Rcd at 20866.

FN12. 47 U.S.C. s 276 (b)(1).

FN13. See supra note 2.

FN14. Section 205 provides the Commission with general prescription authority over carrier charges, classifications, regulations, and practices that the Commission determines are "in violation of any of the provisions of this Act." 47 U.S.C. s 205(a). With the enactment of section 276, which expressly addresses intrastate as well as interstate payphone services, the Commission's section 205 authority has been effectively extended to include prescription of a carrier's charges for intrastate payphone line service if existing charges violate section 276 or the Commission's implementing regulations. In somewhat analogous circumstances, the Supreme Court ruled that the Commission's general rulemaking authority under section 201(b) of the Act extends to the adoption of rules regarding intrastate matters that become subject to the Commission's jurisdiction as a result of enactment of the Telecommunications Act of 1996. *AT&T v. Iowa Utilities Board*, 525 U.S. 366, \_\_\_, 119 S. Ct. 721, 729-30, 142 L. Ed.2d 834, 848-49 (1999). Thus, we may prescribe a payphone line rate, if necessary, and ensure compliance with such a prescription order, even though the prescribed rate may be filed in a state tariff.

FN15. Such services should be included in the submissions even if they are also offered to non-payphone subscribers.

FN16. See generally Commission Requirements for Cost Support Material To Be Filed with Open Network Architecture Access Tariffs, 6 FCC Rcd 5682 (1991); Open Network Architecture Tariffs, 7 FCC Rcd 1512, 1515 PP 20-22.

FN17. Thus, we expect LECs to treat their initial submissions as they would treat a Direct Case filed in a section 204 investigation of a tariff for interstate service.

FN18. 47 CFR s 61.49(f)(2).

FN19. Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, First Report and Order, 11 FCC Rcd 15499 (1996).

FN20. See generally Amendments of Part 69 of the Commission's Rules Relating to the Creation of Access Charge Subelements for Open Network Architecture, 6 FCC Rcd 4524, 4531 P 42; Expanded Interconnection with Local Telephone Company Facilities, 9 FCC Rcd 5154, 5187-88 P 122 (1994).

FN21. Amendment of Part 69, 6 FCC Rcd at 4531 P 44.

FN22. Expanded Interconnection with Local Telephone Company Facilities, 9 FCC Rcd 5154, 5189 P 128 (1994).

FN23. Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, First Report and Order, 11 FCC Rcd 15499 P 713 (1996).

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